



1 *v. Hodges*, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order  
 2 directing the respondent to show cause why the writ should not be granted, unless it appears  
 3 from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. §  
 4 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or  
 5 conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908  
 6 F.2d 490, 491 (9th Cir. 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

7 B. Petitioner’s Claim

8 Petitioner alleges that he was sentenced under the indeterminate sentencing law prior to  
 9 July 1, 1977. On some unspecified date, although he was found suitable for parole, his parole  
 10 release date was later rescinded. Petitioner alleges that he is being forced to attend parole  
 11 suitability hearings even though he has already completed the parole process. Petitioner claims  
 12 that California Penal Code § 3041.5 violates his right against ex post facto laws and his right  
 13 against cruel and unusual punishment. Liberally construed, these claims are cognizable for  
 14 federal habeas review. The Court orders Respondent to show cause why the petition should not  
 15 be granted as to the above issues.

16 **CONCLUSION**

17 1. The Clerk shall serve by mail a copy of this order and the petition (docket no. 1)  
 18 and all attachments thereto upon the Respondent and the Respondent’s attorney, the Attorney  
 19 General of the State of California. The Clerk shall also serve a copy of this order on Petitioner.

20 2. Respondent shall file with the Court and serve on Petitioner, within **sixty days** of  
 21 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing  
 22 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
 23 Respondent shall file with the answer and serve on Petitioner a copy of all portions of the  
 24 underlying state criminal record that have been transcribed previously and that are relevant to a  
 25 determination of the issues presented by the petition. If Petitioner wishes to respond to the  
 26 answer, he shall do so by filing a traverse with the Court and serving it on Respondent within  
 27 **thirty days** of the date the answer is filed.

1           3.       Respondent may file a motion to dismiss on procedural grounds in lieu of an  
2 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
3 2254 Cases within **sixty days** of the date this order is filed. If Respondent files such a motion,  
4 Petitioner shall file with the court and serve on Respondent an opposition or statement of non-  
5 opposition within **twenty-eight days** of the date the motion is filed, and Respondent **shall** file  
6 with the court and serve on Petitioner a reply within **fourteen days** of the date any opposition is  
7 filed.

8           4.       It is Petitioner's responsibility to prosecute this case. Petitioner is reminded that  
9 all communications with the Court must be served on Respondent by mailing a true copy of the  
10 document to Respondent's counsel. Petitioner must keep the court and all parties informed of  
11 any change of address by filing a separate paper captioned "Notice of Change of Address." He  
12 must comply with the Court's orders in a timely fashion. Failure to do so may result in the  
13 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure  
14 41(b).

15           This order terminates docket numbers 2 and 3.

16           IT IS SO ORDERED.

17       DATED: 11/7/12

  
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LUCY H. KOH  
United States District Judge